

PROPERTY AUCTION CONDITION OF SALE

AGREEMENT OF PURCHASE AND SALE OF IMMOVABLE PROPERTY INCORPORATING CONDITIONS OF SALE

ENTERED INTO BETWEEN:

S I PATEL TRUST
(REGISTRATION NUMBER 1280/88)
("The Seller/s")

AND

ID _____
("the Purchaser/s")

The Seller/s offered for sale by auction the property (as described herein below) subject to the conditions of sale contained herein.

By the Purchaser/s signing this agreement the Purchaser/s agrees to purchase the property (as described herein below) for the purchase price referred to below subject to the confirmation by the Seller/s as mentioned in the conditions of sale.

A. PURCHASE PRICE

A.1. HIGHEST BID	_____
A.2. VAT ON BID	_____
A.3. AUCTIONEER'S COMMISSION	_____
A.4. VAT ON COMMISSION	_____
TOTAL (INCLUDING VAT)	_____

Seller/s

Auctioneers

Purchaser/s

PROPERTY AUCTION CONDITION OF SALE

B. DEFAULT

- B.1. Should either or any party breach any terms of the Agreement of Purchase of Sale incorporating the Conditions of Sale and fail to remedy such breach within 7 (seven) days of either hand delivery of a notice or despatch by pre paid registered post of the notice posted or per electronic mail (email), stipulated herein, to the defaulting parties domicilium, calling upon the defaulting party to remedy the breach the injured party shall :
- B.2. If the injured party is the Seller/s, be entitled without prejudice to the Seller/s other rights in law, to claim specific performance or payment of all amounts owing (whether due or not). In the event of the Seller/s electing to cancel the Agreement, if the Seller/s is the injured party, the Seller/s shall be entitled to retain as a pre-estimation of damages all sums paid to the Seller/s by the Purchaser/s and the Purchaser/s shall have no claim of whatsoever nature to the sums of money already paid by him to the Seller/s. Furthermore, the Purchaser/s shall forthwith deliver occupation of the Property to the Seller/s at the Purchaser's expense.
- B.3. If the injured party is/are the Purchaser/s, be entitled, without prejudice to the Purchaser's other rights in law to obtain an Order for specific performance against the Seller/s or to cancel the Agreement and institute any action for damages sustained. The Purchaser/s shall vacate the Property and leave same in good order and repair as at date of signature hereof, fair wear and tear excepted.
- B.4. The Parties agree that should either the Seller/s and/or Purchaser/s cancel the Agreement of Purchase of Sale incorporating the Conditions of Sale for any reason whatsoever, the Auctioneers shall still be entitled to its commission (including VAT) and both the Seller/s and/or Purchaser/s shall will be jointly and severally liable in solidum for payment thereof.

C. SOLE AGREEMENT

- C.1. This Agreement of Purchase of Sale incorporating the Conditions of Sale being Annexure A hereto, constitutes the entire contract between the Seller/s and the Purchaser/s and no representations, warranties or statements made on behalf of any party, prior to, during or after the auction and/or sale shall be of any force and/or effect unless reduced to writing and incorporated herein.
- C.2. The Seller/s and/or the Auctioneers, their/its employees and it's agents or representatives make no valid and binding representations of what so ever nature other than those expressly contained herein.

D. NON VARIATION

- D.1. No variation or consensual cancellation of this agreement shall be of any force or effect unless reduced to writing and signed by all the effected parties or their duly authorised representatives.

Seller/s

Auctioneers

Purchaser/s

PROPERTY AUCTION CONDITION OF SALE

E. NON WAIVER

E.1. No latitude, extension of time or any indulgences which may be given or allowed by the Seller/s and/or the Auctioneers to the Purchaser/s or visa versa in respect of the performance of any obligation in terms of or arising from this Agreement of Purchase of Sale incorporating the Conditions of Sale, shall be a waiver or otherwise affect any of the rights of the Seller/s and/or Auctioneers against the Purchaser/s or visa versa.

DATED AT _____ ON THIS _____ DAY OF _____ 20 _____

AS WITNESSES:

1. _____

_____ AUCTIONEERS ACCEPTING BID

2. _____

AS WITNESSES:

3. _____

_____ PURCHASER AND SURETY SHOULD CLAUSE 26 APPLY

4. _____

SELLER/S:

I/We _____

in my/our capacity as the Seller/s:

HEREBY CONFIRM AND ACCEPT THIS SALE ON THE CONDITIONS AS HEREIN SET OUT

DATED AT _____ ON THIS _____ DAY OF _____ 20 _____

AS WITNESSES:

5. _____

_____ SELLER/S

6. _____

_____ Seller/s _____ Auctioneers _____ Purchaser/s

PROPERTY AUCTION CONDITION OF SALE

ANNEXURE A CONDITIONS OF SALE (OF IMMOVABLE PROPERTY)

The following are conditions of sale whereby certain fixed Property known as:

Address: 40 GREY STREET
Suburb: WOODSTOCK
City: CAPE TOWN
Erf No: 10895
In Total Extent of: 998.000 m²

Held under Deed of Transfer No: T38091/2010

(herein referred to as "**the Property**")

will be offered for sale on the 27th day of **NOVEMBER** at 11h00, at **ALBERT ROAD , WOODSTOCK, CAPE TOWN** for the account of the Seller/s:

S I PATEL TRUST
(REGISTRATION NUMBER 1280/88)
(herein referred to as "**the Seller/s**")

1. The Property will be provisionally sold to the highest bidder subject to confirmation of the sale by the Seller/s within five (5) days and the highest bidder will be bound by his bid for five (5) days from date of signature of these conditions by the Purchaser/s.
2. The Agreement of Purchase of Sale incorporating the Conditions of Sale shall serve as a deed of sale, whether the Property is sold by public auction or by private treaty.
3. The Auction is being conducted by the Auctioneers who reserve to themselves the right to refuse any bid without giving any reason for such refusal. In the event of a dispute between bidders or between any bidder and the Auctioneers, the Property will immediately be re-auctioned.
4. The highest bidder will, immediately after the sale, sign these conditions and if the Purchaser/s purchases on behalf of a principal, he/she will divulge the name of such principal upon signature hereof. The Seller/s however, will sign the conditions only upon confirmation of the sale.

Seller/s

Auctioneers

Purchaser/s

PROPERTY AUCTION CONDITION OF SALE

5. Neither the Seller/s nor the Auctioneers will be responsible for the accuracy of any statement made in any advertisement or other notice of sale of the Property relating to its situation, improvements, quality, extent or other detail and no compensation will be claimable in respect of any error so made and prospective Purchaser/s should themselves check the accuracy of such statement and any other conditions relating to the Property prior to the sale thereof.
6. The Property is sold as described in the existing Title Deeds and is subject to all servitudes, conditions, etc, as described therein. The Seller/s or the Auctioneers cannot be held responsible for any shortage should the Property be re-surveyed and by the same token, the Seller/s will not benefit by any surplus in the event of there being such a surplus.
7. In the event of any error being made by the Auctioneers, such error will not be binding on the Seller/s or the Auctioneers, nor shall the Seller/s and/or Purchaser/s have any right, remedy or claim of any nature whatsoever against the Auctioneers for any loss, damage (whether general, special or consequential), expense or injury which may be suffered by the Seller/s and/or Purchaser/s, directly or indirectly, arising out of or relating to this Agreement of Purchase of Sale incorporating the Conditions of Sale and/or auction and/or private treaty, irrespective of whether or not such loss, damage, expense or injury shall have been caused by the negligence of the Auctioneers or any person for whose acts or omissions the Auctioneers' is vicariously liable.
8. The Purchaser/s acknowledges and/or warrants that
 - 8.1. he/she has inspected the Property and Title Deed; and
 - 8.2. he/she is satisfied with the condition of the property, the condition of the improvements thereon, and the description thereof; and
 - 8.3. that the Seller/s and/or the Auctioneers and/or their agents have made no representations or given any guarantees as to the condition and state of the property
 - 8.4. that the Property is sold and purchased "voetstoots".
9. The Seller/s and the Purchaser/s agree that the Auctioneers, its employees and/or its agents and/or its representatives make no valid and binding representations of what so ever nature other than those expressly contained herein.
10. This sale does not include any loose assets found on the Property excepting for any loose assets specifically mentioned in herein.

Seller/s

Auctioneers

Purchaser/s

PROPERTY AUCTION CONDITION OF SALE

11. The Seller/s, the Auctioneers and the Purchaser/s agree to the jurisdiction of the Magistrate's Court in the event of any action which may arise from this sale. The Seller/s and/or the Auctioneers, shall, at his/her/their/its sole discretion, be entitled to institute an action in any competent division of the High Court of South Africa if it elects to do so and reserves his/her/their/its rights to institute action in the High Court and to charge High Court tariff.
12. The Purchaser/s will not be entitled to make any additions or alterations to the Property prior to registration thereof in his/her/their name without the written consent of the Seller/s. The Purchaser/s undertakes to keep the Property in the same good order until date of transfer into his/her/their name or of re-delivery to the Seller/s in the event of this agreement being cancelled for any reason whatsoever. If, in the Seller/s's opinion, the Property has not been kept in good order, the Seller/s will be entitled, without notice to the Purchaser/s, to undisturbed and immediate access to the Property and to have the Property restored to good order. Any such costs incurred will be for the account of the Purchaser/s.
13. Conveyancers appointed by the Auctioneers shall attend to the registration of the transfer of the Property into the name of the Purchaser/s. The Purchaser/s will be liable for and shall pay to the conveyancer, on demand, all the costs of transfer, transfer duty or VAT, whichever is applicable, and all rates and taxes and municipal and other charges levied on the Property from the date of occupation of the Property by the Purchaser/s to the date of registration of the Property.
14. Value Added Tax shall be added to the Purchase Price where appropriate and upon signature of Agreement of Purchase of Sale incorporating the Conditions of Sale and the Purchaser/s shall immediately pay 10 % of the highest bid being to the Auctioneers by way of bank guaranteed cheque acceptable to the Auctioneers, or in cash.
15. In respect of the balance of the Purchase price, the Purchaser/s shall within twenty one (21) days after confirmation of these conditions by the Seller/s, furnish the Seller/s with a bank guarantee or such other irrevocable guarantee acceptable to the Seller/s for the balance of the Purchase price and all other costs payable to the Seller/s's conveyancers stipulated herein. The said guarantee shall provide for interest at the rate of **13,5% (thirteen and one half percent)** calculated from the occupation date of the Property by the Purchaser/s to the date of registration of transfer of the Property. In the event of the sale not being confirmed by the Seller/s, the amount paid by the Purchaser/s will be refunded to the Purchaser/s exclusive of interest.
16. The Purchaser/s is responsible for Auctioneers' commission totalling an amount of 10 % excluding VAT, in addition to the highest bid. The Auctioneers shall have the right, on confirmation, to deduct such commission (plus VAT) and costs from the deposit paid in terms hereof, which commission shall be deemed to have been earned on confirmation of the sale by the Seller/s.

Seller/s

Auctioneers

Purchaser/s

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17. Occupation of the Property shall be given to the Purchaser/s on date of acceptance of irrevocable guarantees. In the event of there being a reason why occupation cannot be given as aforesaid, the Purchaser/s shall advise the Seller/s of such hindrance and shall do so in writing and the Seller/s shall thereafter have Fourteen (14) days to take steps to rectify the problem to give the Purchaser/s occupancy.
18. The Seller/s will be responsible for all charges and costs relating to the Property including rates and taxes to the date of occupation by the Purchaser/s.
19. From date of occupation the Property will be at the Purchaser's risk, and will become the Purchaser's responsibility from which time the Purchaser/s will be responsible for all charges and costs relating to the Property.
20. Transfer of the Property will be passed into the name of the Purchaser/s as soon as reasonably possible, after the costs mentioned in Paragraph 13 hereof and the balance of the Purchase price as well as the occupational interest has been paid to the Seller/s's conveyancers.
21. In the event of the Seller/s declining to sign these conditions of sale, he/they shall not be called upon to furnish reasons therefore.
22. In the event of the Purchaser/s being in breach of any of the conditions hereof as at the due date, the Seller/s or his/their agent will be entitled without prior notice to the Purchaser/s to:
 - 22.1. Cancel the sale by written notice transmitted by fax to the Purchaser's fax number which appears on page 4 of these conditions and all amounts paid by the Purchaser/s to date will be forfeited as "roukoop" and genuine pre-estimated damages and the Seller/s reserves his/their rights to claim any further damages from the Purchaser/s – or
 - 22.2. Immediately claim the full purchase price and implementation of the conditions hereof,
23. The Purchaser/s hereby undertakes to pay all attorney and client costs, tracing fees and collection charges incurred by the Seller/s to obtain payment of the amounts due in terms of these conditions including interest at the maximum possible rate from date of signature hereof to date of payment.
24. The parties hereto agree that their respective addresses and/or fax numbers as set out herein will serve as their domicilium citandi et executandi - in other words, the addresses to which all notices or documents relating to this agreement of sale, may be addressed.
25. Any extension of time or other concession granted by the Seller/s and/or the Auctioneers to the Purchaser/s shall not be deemed to be a waiver of the Seller/s and/or the Auctioneers rights or to affect them in any way in terms hereof.

Seller/s

Auctioneers

Purchaser/s

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PROPERTY AUCTION CONDITION OF SALE

26. COMPANIES/CLOSE CORPORATIONS FORMED OR TO BE FORMED:

- 26.1. In the event of the party signing as Purchaser/s acting as Trustee for a Company/Close Corporation or a Trust formed or to be formed, then that signatory binds himself/herself in his/her personal capacity as co-principal debtor for all the obligations herein created and will be responsible to the Seller/s as if he/she was the Purchaser/s in terms of this deed of sale.
- 26.2. In the event of the Company/Close Corporation not being incorporated and/or registered within a reasonable time (30 days), then the signatory hereto on behalf of such Company/Close Corporation, shall be treated in his/her personal capacity as Purchaser/s and shall be liable for all the obligations herein contained as if he/she were the actual Purchaser/s.
- 26.3. Notwithstanding the foregoing, the signatory hereto shall be responsible in his/her personal capacity if:-
- 26.3.1. The Company/Close Corporation to be formed is not incorporated and/or registered prior to the date on which the guarantees were to have been delivered.
- 26.3.2. The Company/Close Corporation to be incorporated does not ratify this contract.
- 26.3.3. The Company/Close Corporation, despite ratification, fails to comply strictly with the terms the Agreement of Purchase of Sale incorporating the Conditions of Sale.
- 26.3.4. In the event of the signatory purchasing on behalf of a Trust and the Trust is not registered or ratifies this contract, all the above obligations shall apply to the signatory in his/her personal capacity.
- 26.3.5. In the event of there being more than one Purchaser/s reflected on this agreement, such Purchaser/s will be jointly and severally liable *in solidum* for the due and proper performance of all the parties' obligations in terms of this agreement and the parties hereto waive their rights under the *exception de duobus vel pluribus reis debendi*.
- 26.3.6. Should it transpire that the Power of Attorney in terms of which any Purchaser/s signs this agreement is for any reason invalid, then the signatory shall be liable in his/her personal capacity for all the above obligations of the Agreement of Purchase of Sale incorporating the Conditions of Sale.

27. The Seller/ss record that no agreement exists in relation to occupancy of the Property other than occupancy by the Seller/s. Should any other person or persons be in occupancy, such occupancy would not be subject to any valid lease, and the Purchaser/s shall, at his expense, arrange for the removal of such person or persons after confirmation.

Seller/s

Auctioneers

Purchaser/s

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28. The Seller/s shall be required to provide a Certificate of Compliance with regards to an electrical installation on the Property as set out in the Electrical Installations Regulation promulgated on the 23rd October 1992 in terms of the machinery and Occupational Safety Act No 6/1983. The Seller/s agrees to bear all costs necessary in order to obtain such a certificate.
29. The conditions of sale being Annexure A are incorporated in the Agreement of Purchase and Sale to be signed by the parties thereto *mutatis mutandis*.

DATED AT _____ ON THIS _____ DAY OF _____ 20 ____

AS WITNESSES:

7. _____

AUCTIONEERS ACCEPTING BID

8. _____

AS WITNESSES:

9. _____

PURCHASER AND SURETY
SHOULD CLAUSE 26 APPLY

10. _____

SELLER/S:

I/We _____

in my/our capacity as the Seller/s:

HEREBY CONFIRM AND ACCEPT THIS SALE ON THE CONDITIONS AS HEREIN SET OUT

DATED AT _____ ON THIS _____ DAY OF _____ 20 ____

AS WITNESSES:

11. _____

SELLER/S

12. _____

Seller/s

Auctioneers

Purchaser/s



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PROPERTY AUCTION CONDITION OF SALE

PURCHASER AND SELLER/S INFORMATION AND DOMICILLIA

PURCHASER:

FULL NAMES: _____

IDENTITY NUMBER _____

TELEPHONE NUMBERS _____

FAX NUMBERS _____

PHYSICAL ADDRESS _____

POSTAL ADDRESS _____

MARITAL STATUS _____

HUSBAND/WIFE'S FULL NAMES _____

IDENTITY NUMBER _____

SELLER/S:

FULL NAMES: _____

IDENTITY NUMBER _____

TELEPHONE NUMBERS _____

FAX NUMBERS _____

PHYSICAL ADDRESS _____

POSTAL ADDRESS _____

MARITAL STATUS _____

HUSBAND/WIFE'S FULL NAMES _____

IDENTITY NUMBER _____

Seller/s

Auctioneers

Purchaser/s